REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

G & W ARCHITECTS, ENGINEERS AND PROJECT CONSULTANTS CO.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8604

Members:

CASTAÑEDA, JR., *Chairperson, and*
CASANOVA, *JJ.*

Promulgated:

DEC 02 2016 1:45 pm

x- -x

RESOLUTION

CASTAÑEDA, JR., *J.*:

This resolves respondent's **Motion for Reconsideration**, filed on September 6, 2016, with petitioner's **Comment (to Respondent's Motion for Reconsideration)**, filed on September 29, 2016. The dispositive portion of the assailed Decision[1] promulgated on August 16, 2016 reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency income tax and deficiency VAT assessments for taxable year 2007 issued against petitioner are hereby **CANCELLED**.
>
> **SO ORDERED.**"[2]

[1] Docket, pp. 1224-1256.
[2] Docket, p. 1255.

Respondent claims that the Court may have erred in granting the instant Petition for Review based on the following grounds:

a. The assessment was based on actual facts as admitted by petitioner;

b. Respondent has presented sufficient proof of fraud for the application of Section 248(B) of the National Internal Revenue Code (NIRC) of 1997, as amended; and

c. Petitioner is liable for ₱181,317,267.09 and ₱518,268,999.15 representing deficiency income tax and value added tax, respectively, for taxable year 2007.

Respondent alleges that the assessment was already pursuant to a Letter of Authority, thus the guidelines in relation to a Letter Notice no longer applies to the subject assessment. Furthermore, respondent alleges that the factual bases of the assessment were already admitted by petitioner in its Petition for Review filed on January 25, 2013.

Respondent further alleges that petitioner was well aware of the actual facts from which the assessment was based. Respondent contends that petitioner was able to intelligently answer the assessment notices sent against it. Petitioner's protest letters allegedly acknowledged that the amount reflected in the assessment were land sales of Fort Bonifacio Development Corporation (FBDC) to petitioner. Thus, when assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the complaining party to show that the assessment was erroneous in order to relieve himself from it.

Respondent concludes that the issue on the propriety of the assessment must rest on petitioner's allegation that it did not engage in any sale transaction of condominium units – to which respondent argues to the contrary.

Respondent also maintains that petitioner was doing business as a real estate developer while being registered as a general professional partnership. According to respondent, it is an undisputed fact that petitioner engaged in a Build-To-Own concept wherein it undertakes the responsibility to build/construct/develop a condominium project – thus, the purchases it incurred during the construction of its condominium corporation, such as the parcels of land from FBDC.

Furthermore, respondent contends that petitioner's allegation that it never owned or acquired title to the land or the condominium units built thereon is bereft of merit considering the stipulations in the Contract to Manage and Execute the Construction of the Grand Hampton's Place Condominium.

Respondent further claims that the alleged under-declaration of petitioner's purchases reflects a considerable increase in its net worth. The amount allegedly used for these purchases is equivalent to undeclared income which should be taxed accordingly. Hence, petitioner was assessed income tax and Value Added Tax (VAT) in accordance with Sections 31, 106 and 108 of the NIRC of 1997, as amended and Revenue Memorandum Order (RMO) No. 32-2007.

From the foregoing, the falsity of petitioner's tax returns for 2007 was allegedly recognizable. According to respondent, petitioner's Income Tax Return did not declare any purchases and that these undeclared purchases will substantially increase petitioner's net worth.

Lastly, respondent maintains that the substantial under-declaration rendered petitioner's tax return for 2007 a false or fraudulent return as defined under Section 248(B) of the NIRC of 1997, as amended. Thus, the ten (10)-year period as provided by law must allegedly apply in this case.

Petitioner opposes the above motion for the following reasons:

a. The motion for reconsideration is *pro forma* and, thus, should be denied outright;

b. The tax deficiency assessment, being based on mere presumption, has no factual and legal bases and should therefore be cancelled; ge

c. This Court did not err in holding that the prescriptive period applicable in this case is three (3) years since falsity of petitioner's return was not clearly established; and

d. Petitioner did not engage in any selling activity, which may be subject to value added tax and income tax under Revenue Regulations (RR) No. 2-98, as amended by RR No. 6-2001 and Section 196 of the NIRC of 1997, as amended.

A scrutiny of respondent's allegations shows that they have been substantially considered and addressed in the assailed Decision. In fact, some of the arguments in respondent's Motion for Reconsideration are the same as the averments interposed in its Answer[3] filed on May 16, 2013.

The assessment was based on unverified information and presumptions.

As already found by the Court in the assailed Decision, respondent's assessment is anchored mainly on the finding of undeclared purchases of petitioner which were admitted by respondent's witness to be unverified. Thus, the admission of unverified findings casts doubts to the reliability and correctness of the assessment.

On the other hand, respondent insists that the reason why petitioner was assessed is because the alleged under-declared purchases reflect a considerable increase in its net worth. **The amount used for these alleged purchases were considered to be equivalent to undeclared income which should be taxed accordingly**.

As regards this matter, the Court finds the same inconsistent with the computation in the assessment showing that the basis of the income tax and VAT assessed is actually the alleged additional taxable sales. As reflected in the Final Assessment Notice (FAN)[4], respondent treated the alleged undeclared purchases as part of

---

[3] Docket, pp. 276-287.
[4] Exhibit "R-9", BIR Records, pp. 415-419.

petitioner's cost which it eventually considered to have translated to the computed taxable sales.

The FAN contains the assessment of petitioner for deficiency income tax and VAT for the calendar year 2007 as follows:

DEFICIENCY VALUE ADDED TAX	
Discrepancy per Letter Notice (Purchases)	
Local Purchases	₱ 332,961,715.85
Importations	-
Total	₱ 332,961,715.85
Divide by Cost of Sales Ratio	32.85%
Additional Taxable Sales	₱ 1,013,582,087.82
Multiply by Gross Profit Rate	67.15%
Additional Gross Income	₱ 680,620,371.97
Multiply by VAT Rate	12%
Deficiency VAT	₱ 81,674,444.64
Add: 50% Surcharge	40,837,222.32
20% interest p.a. Up to (8/31/2011)	58,805,600.14
TOTAL AMOUNT DUE	₱ 181,317,267.09
DEFICIENCY INCOME TAX	
Net Taxable Income	₱ 380,496.14
Add: Additional Gross Income	680,620,371.97
Total Taxable Income	₱ 681,000,868.11
Multiply by Normal Income Tax Rate	35%
Adjusted Income Tax Due	₱ 238,350,303.84
Less: Income Tax Due per ITR	133,174.00
Deficiency Income Tax	₱ 238,217,129.84
Add: 50% Surcharge	119,108,564.92
20% interest p.a. Up to (8/31/2011)	160,943,304.39
TOTAL AMOUNT DUE	₱ 518,268,999.15

To reiterate the Court's findings, respondent merely presumed that the alleged undeclared purchases is part of petitioner's cost which allegedly translated into profit or income. Thus, respondent's assessment was not based on **undeclared income actually received by petitioner**.

It must be pointed out that in order to stand the test of judicial scrutiny, the assessment must be based on **actual facts**. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[5]

[5] *Commissioner of Internal Revenue vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987.

In this case, while there is a presumption of correctness of respondent's assessment, being a mere presumption, the same cannot be made to rest on another presumption, i.e., the under declared purchases is translated and would automatically result to profit, undeclared income or additional taxable sales which would in turn increase petitioner's income tax and VAT liability.

Clearly, the allegation that respondent treated the amount used for the alleged undeclared purchases to be equivalent to undeclared income is bereft of merit.

Consequently, there is no reason for the Court to conclude that respondent has sufficiently established the falsity of petitioner's return.

There was no admission on the part of petitioner that it is the one who made the alleged undeclared purchases.

As regards the allegation that the factual bases of the assessment were already admitted by petitioner in its Petition for Review filed on January 25, 2013, and petitioner allegedly acknowledged that the amount reflected in the assessment were land sales to petitioner, a perusal of the records shows that petitioner did not admit that it is the one who owned or acquired the title to the said land which allegedly formed part of the undeclared purchases.[6]

Moreover, even assuming that petitioner admitted the factual bases of the assessment, the fact remains that in arriving at the subject assessment, respondent merely presumed that these alleged undeclared purchases translated into additional taxable sales. The Court cannot presume that the assessment is correct if the said presumption rests on another presumption as already discussed above. Therefore, there is a sufficient ground for the Court to cancel the assessment for lack of factual and legal basis.

[6] Paragraph 20, Petition for Review, docket, p. 12; Exhibit "P-21", docket, pp. 792-793.

Respondent failed to present sufficient proof to show the existence of fraud.

Respondent alleges that it has presented sufficient proof to show that petitioner's Build-To-Own concept was a scheme to circumvent tax laws. In this regard, respondent invites the Court's attention to the "Contract to Manage and Execute the Construction of the Grand Hampton's Place Condominium", particularly Section 5.05 thereof, as follows:

> "5.05 **Conveyance of Title of the Subject Unit and Common Areas**
>
> Upon completion of the Project and full payment by the Client of all amounts payable under this Contract, title to the Subject Unit including the appurtenant parking unit shall be conveyed by G & W to the Client. Upon completion of the Project, title to the Common Areas shall be conveyed by G & W to the Condominium Corporation which shall be established in accordance with the provisions of the Master Deed."[7]

Respondent maintains that the same Master Deed was mentioned in the Articles of Incorporation of Grand Hamptons I[8], to wit:

> "SECOND: A. That the purpose for which such association is incorporated are:
>
> To own and hold title to common areas in the condominium project known and identified as 'The Grand Hamptons Tower I Condominium' which has been constituted xxx, on the properties described in and brought under the operation of said Act by that 'Master Deed with Declaration of Restrictions' executed by GW Architects, Engineers and Project Development Consultants, to manage, administer and operate the said project pursuant to and in accordance with aforesaid laws and the Master Deed xxx." Jr

---

[7] Exhibit "P-3-A", docket, pp. 692-709.
[8] Exhibit "R-5" (marked as Exhibit "R-6"), BIR Records, pp. 261-267.

Notably, the above contract was presented by petitioner, and not respondent, to prove that it is not involved in any selling activity. Furthermore, the above-cited provisions from the contract and the Articles of Incorporation of Grand Hamptons I are found to be insufficient to prove that petitioner owned or acquired title to the land or the condominium units built thereon. In fact, the cited provision in the Articles of Incorporation of Grand Hamptons I shows that petitioner's functions are merely to manage, administer and operate the project. There was no clear showing from the above provisions that petitioner acquired the alleged land in its own name.

Also, it appears that the foregoing allegation is a mere afterthought since there was no mention of the above contract in respondent's Answer[9] to the Petition for Review and Formal Offer of Evidence[10].

With the foregoing discussion, the Court's finds no compelling reason to reverse the ruling in the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

CAESAR A. CASANOVA
Associate Justice

[9] Docket, pp. 276-287.
[10] Docket, pp. 1116-1127.